



From Title VI . . . To LEP

Is this new or old?



Defining LEP

- Persons who have Limited English Proficiency
- English is not the primary language in the home
- English is spoken not well, or not at all



Title VI

- Title VI (enacted 1964) Provides:
 - No person in the United States shall,
 - On the ground of race, color or national origin
 - Be excluded from participation in
 - Denied benefits of
 - Subjected to discrimination



Title VI

- Enacted 1964
- LEP is not a protected class
 - Race, color, national origin
- No mention of LEP anywhere in statute
- No statutory amendment mentions LEP



Key question?

- If LEP is not a protected class, how do protections come into play?



HUD's Title VI Regulations

- Regulations (1973)
- Prohibited actions also include
- Criteria or methods of administration which
- have *the effect* of subjecting persons to discrimination, or



HUD's Title VI Regulations

- Criteria or methods of administration which
have the *effect* of defeating or
substantially impairing program
objectives



Effect of Discriminating

- Language is linked to national origin
- Language is not immutable, BUT
- There will always be a larger effect on persons for whom the selected language is not primary
- These persons will be excluded



Effect of Defeating/Impairing Program

- Lau v. Nichols, 414 U.S. 563 (1974)
 - Public school's provision of unequal education opportunities to students who did not speak English
 - denied them a *meaningful opportunity to participate* in public educational program
- Impact of Alexander v. Sandavol, 121 S.Ct. 1511 (2001)

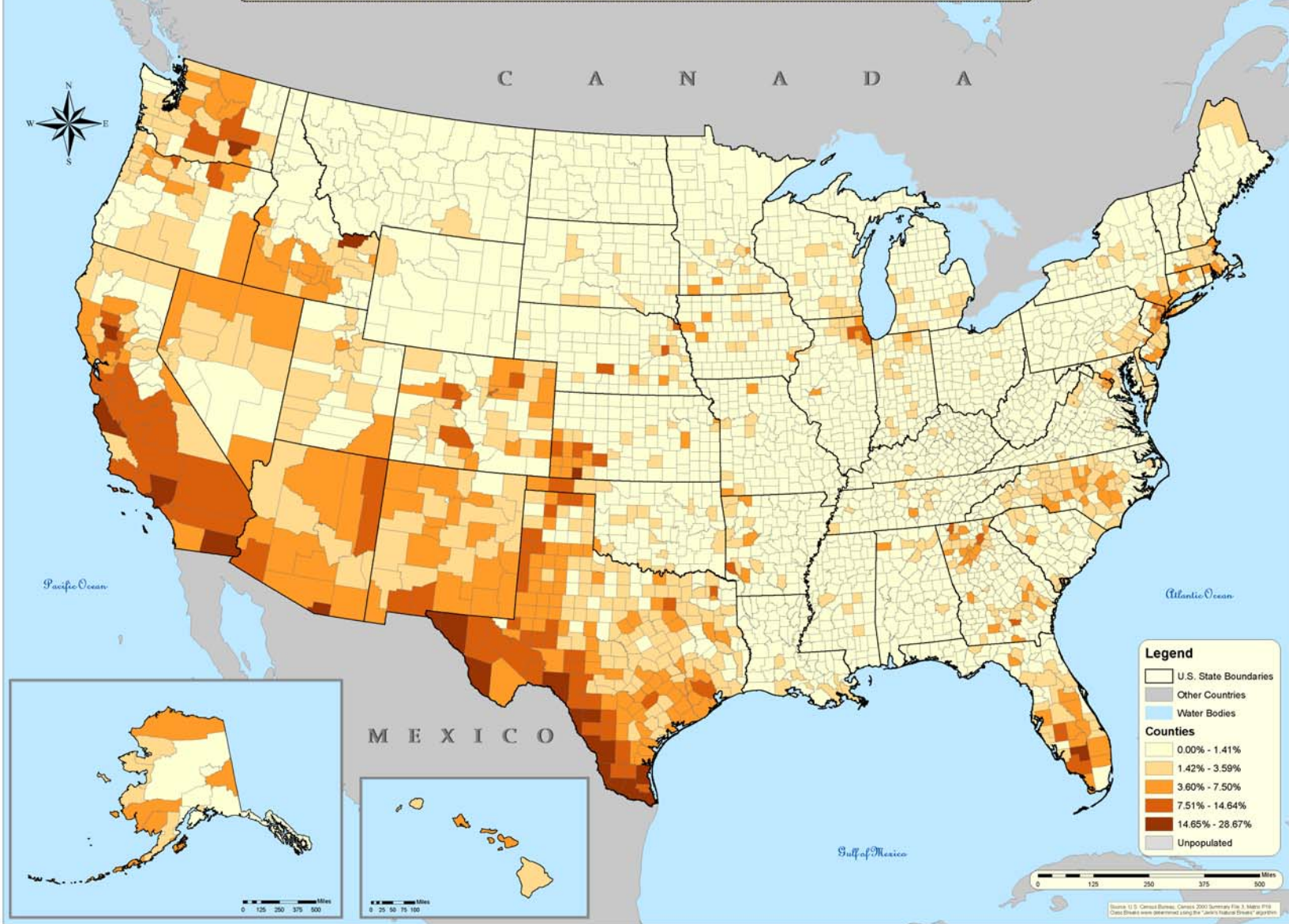


Two “New” Things

- Sociological

- Legal

Percent of Persons 5 Years and Over Who Speak a Language Other Than English at Home and Speak English Less Than "Well"





Demographics

- MAP – Percentage of Persons over 5 years who speak a language other than English at home and speak English less than well.
- Census data showed only one state with no one



Demographics

15 states
had an increase in
LEP populations
of greater than
200%



200% or Greater Increase

Oregon	Idaho	Nevada
Nebraska	Kansas	Iowa
Indiana	Kentucky	Minnesota
Kentucky	Arkansas	Tennessee
Alabama	Georgia	S. Carolina
	N. Carolina	



Executive Order 13166

- Goals
- Federally Conducted Programs and Activities
- Federally Assisted Programs and Activities
- Consultations
- Judicial Review



Executive Order 13166

- Goals:
 - Improve accessibility of services to eligible LEP persons pursuant to Title VI
 - Implementing a system providing
 - Meaningful access
 - Without unduly burdening fundamental mission
 - Justice Department Guidance



Executive Order 13166

- Federally Conducted Programs and Activities
 - Add these as they are not covered by Title VI
 - Develop and implement plans to improve access of LEP persons to federally conducted programs
 - Consistent with DOJ guidance



Executive Order 13166

- Federally Assisted Programs
 - Provide written guidance
 - Tailored to recipients
 - Take into account the types of services provided
 - Consult with Department of Justice



Executive Order 13166

- Consultations
 - Stakeholders
 - LEP persons
 - LEP Representative Organization
- This was the publication for comments.



Executive Order 13166

- Judicial Review
 - Improve internal management of agencies
 - Does not create any:
 - New right or benefit
 - Substantive of procedural
 - Enforceable by law against the United States



Guidance: Four Factors

- Number or proportion of population
- Frequency of Contact
- Importance of Service/Benefit
- Resources Available



Interpretation vs. Translation

- Interpretation
 - Oral
 - Simultaneous, consecutive, summary
- Translation
 - Written
 - Safe harbors
- Differing standards for what is needed